

REMARKS

Claims 1-3, 5-6, 12-17, 19-21, 28-30, 45-48 and 50 are pending in the application.

Claims 1-3, 5-6, 12-17, 19-21, 28-30, 45-48 and 50 have been rejected.

Claims 1, 12, 15, 16, 28, 45, 46, 47, and 50 have been amended.

Claims 51-64 have been added.

Rejection of Claims under 35 U.S.C. § 101

Claims 45-47 and 50 stand rejected under 35 U.S.C. §101 as purportedly being directed to non-statutory subject matter due to purportedly being “directed toward a mental process that is totally reliant on the operation of human intelligence alone.” *See* Office Action, pp. 2-3. In order to further clarify these claims, Applicants have amended the claims to recite a “computer-implemented method,” thereby clarifying that the claimed method is not a “mental process.” For at least this reason, Applicants submit that claims 45-47 and 50 are allowable over 35 U.S.C. §101. Applicants therefore respectfully request the withdrawal of this rejection.

Rejection of Claims under 35 U.S.C. § 103

Claims 1-3, 5, 6, 12-17, 19-21, 28-30, 45-58 and 50 stand rejected under 35 U.S.C. §103(a) as purportedly being unpatentable over U.S. Patent No. 6,804,657 issued to Sultan (“Sultan”) in view of Official Notice. *See* Office Action, p. 4. Applicants respectfully traverse this rejection due to a number of infirmities.

The Cited Sections of Sultan Fail to Teach a Forecast Series

First, the cited sections of Sultan fail to teach the forecast series recited in independent claims 1, 12, and 15. As claimed, the recited forecast series is an *individual entity*. Applicants note, therefore, that in order for a reference to teach a forecast series, it would be necessary for a reference to teach an *individual entity* matching the claimed characteristics of a forecast series. But the Office Action fails to even allege that Sultan teaches such an *individual entity*. The sections of Sultan cited by the Office Action

merely purport to teach aspects of the parameters of the forecast series recited in these claims.

The Office Action cites the following against claim 1:

Sultan discloses a computer system comprising: . . .
a forecast series creation set of instructions to:
identify hierarchy data defining a hierarchy structure of an organization, including data identifying a hierarchical position of each member of the organization (col. 2, lines 19-21; col. 11, lines 9-26).

See Office Action, p. 4. No citation is even offered to purportedly establish either the existence of a teaching concerning the forecast series creation set of instructions or the existence of a teaching concerning the forecast series as an *individual entity*. The only citation offered is one that purports to teach the identification of hierarchy data defining a hierarchy structure of an organization, including data identifying a hierarchical position of each member of the organization.

In addition, even if the cited sections of Sultan were offered with the intention of establishing the existence of a teaching concerning the forecast series as an *individual entity*, Applicants note that the cited sections fail to disclose any *individual entity* that can be fairly construed to equate to the claimed forecast series. The cited sections state:

. . . an embodiment of the present invention, includes steps of defining an hierarchical structure for a sales force of the company; defining a place within the hierarchical structure for each member of the sales force; . . .

(*Sultan*, 2:19-21) and

In like manner, Regional Manager B3 may view a pipeline and/or a forecast by rolling up (summing) the pipeline and/or forecast information of all those directly or indirectly reporting to him. As shown in FIG. 2, the rolled up pipeline and/or forecast information includes the pipeline and/or forecast information of Regional Managers B31, B32 and B33 that directly report to him. Regional Manager B3 may request that the pipeline and/or forecast information be presented with as little or as much detail as desired. Indeed, the rolled up pipeline and/or forecast information may represent anticipated sales across product lines or for a single product, for any time period for which pipeline information exists, for all Account Supervisors or for a single selected Account Supervisor or even down to the deal and Sales representative level. Any member of the sales force, therefore, may drill down as far as the most granular level available, as long as his or her assigned permission level allows it.

(*Sultan*, 11:9-26). Thus, at best, the cited sections merely discuss “the steps of defining an hierarchical structure.” However, the cited sections fail to teach an *individual entity* that can be fairly construed to equate to the claimed forecast series. Therefore, even if it is assumed, for the sake of argument, that the cited sections of *Sultan* teach the individual aspects of the recited parameters of the forecast series recited in claim 1 (a point Applicants fail to endorse), the cited sections of *Sultan* would still fail to teach the *individual entity* of a forecast series.

A similar analysis applies to the arguments offered in support of the rejections of independent claims 12 and 15. As shown on pages 9 and 16 of the Office Action, the arguments offered against claims 12 and 15 are similar in form and cite similar (if not identical) portions of *Sultan*.

In addition to the foregoing, Applicants note that certain advantages may be derived from a forecast series, as an *individual entity*, that cannot be derived from a mere collection of aspects of the parameters of a forecast series. For example, a forecast series can not only be named, referred to, modified, and stored on a storage device, but it can be identified as being no longer valid for the creation of a forecast, along with other advantages as set forth in the specification. Some of these advantages are reflected in newly added claims 51-64. Thus, in order for a rejection of independent claims 1, 12 and 15 to be successful, it must address the claimed forecast series as an *individual entity*.

Thus, for at least the reason that the cited sections of *Sultan* fail to teach the forecast series as an *individual entity*, Applicants respectfully request the reconsideration and withdrawal of this rejection against independent claims 1, 12, and 15. Likewise, since remaining independent claims 28, 45, 48, and 50 similarly recite a forecast series and stand rejected on the same grounds as at least one of claims 1, 12, and 15 (see Office Action, pp. 13 and 23), Applicants respectfully request the reconsideration and withdrawal of this rejection against all claims.

Technical Line of Reasoning Supporting Official Notice Not Clear and Unmistakable

Second, the Official Notice taken by the Office Action regarding independent claims 1, 12, and 15 fails to be supported by a clear and unmistakable line of reasoning, as required by MPEP 2144.03(B) in cases where the line of reasoning is unsupported by documentary evidence.

Regarding independent claims 1, 12 and 15, the Office Action states that

... Official Notice is taken that it was old and well-known in the art of simulation software at the time of Applicant's invention to pre-store common scenarios as a base for further analysis. The pre-storage of common scenarios and related sets of parameters provide templates that can be conveniently called up as needed to prevent a user from having to re-type the same commonly used parameters over and over again.

See Office Action, pp. 8, 12, and 21. For at least the reason that the term "simulation software" is broad and has an uncertain meaning, Applicants assert that the Office Action has not offered a clear and unmistakable line of reasoning. The term may or may not include Sultan, and the assertion made by the Office Action that it was old and well-known in the art of simulation software to "pre-store common scenarios as a base for further analysis" may or may not be correct. Thus, for at least the reason that the term "simulation software" is broad and has an uncertain meaning, Applicants assert that the noticed fact has not been established to be either common knowledge or well-known in the art.

Thus, for at least the additional reason that, in cases in which a noticed fact has not been established to be either common knowledge or well-known in the art, Applicants respectfully submit that it is required that the Office Action "point to some concrete evidence in the record in support of these findings." See MPEP 2144.03(C) and *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697. Since no such concrete evidence has been supplied, Applicants respectfully request that the Examiner provide such support for the Noticed matter.

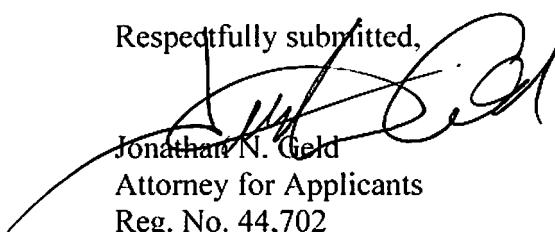
Since the Officially Noticed matter lacks evidentiary support, Applicants submit that the Noticed matter is unavailable as art for combination under 35 U.S.C. §103. Applicants therefore respectfully request the reconsideration and withdrawal of this rejection against independent claims 1, 12, and 15. Likewise, since remaining independent claims 28, 45, 48, and 50 stand rejected on the same grounds as at least one of claims 1, 12, and 15 (see Office Action, pp. 13 and 23), Applicants respectfully request the reconsideration and withdrawal of this rejection against all claims.

CONCLUSION

In view of the amendments and remarks set forth herein, the application and the claims therein are believed to be in condition for allowance without any further examination and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5090.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicant hereby petitions for such extensions. Applicant also hereby authorizes that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. § 1.16 or § 1.17, be charged to deposit account 502306.

Respectfully submitted,


Jonathan N. Geld
Attorney for Applicants
Reg. No. 44,702
(512) 439-5090 [Phone]
(512) 439-5099 [Fax]